IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 839 of 2003
in
SPECIAL CIVIL APPLICATION No 3937 of 2002
with
LETTERS PATENT APPEAL Nos.840 to 844 of 2003
with
CIVIL APPLICATION Nos.4925, 4927, 4945, 4914,
4940, 4943 of 2003

Date of Decision: 2.7.2004

STATE OF GUJARAT

Versus

SHANKARBHAI T PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellants Ms.AGP.Manisha Lavkumar

For the Respondents Mr.Adv.D.M.Thakkar

PER: BHAWANI SINGH, CHIEF JUSTICE (COMMON ORAL):-

Admit. Shri D.M.Thakkar, learned counsel waives service on behalf of the respondents in Letters Patent Appeal and Civil Applications respectively.

2. This group of six Appeals [LPA Nos.839 of 2003 to No.844 of 2003] along with Civil Applications viz. [C.A.Nos.4925, 4927, 4945, 4914, 4940 and 4943 of 2003]

Whether reporters of Local Papers may be allowed to see the Judgment? Whether reporters of Local Papers may be allowed to see the Judgment? Wheth r reporters of Local Papers may be allowed to see the Judgment? Whether rep rters of Local Papers may be allowed to see the Judgment? Whether reporters of Local Papers may be allowed to see the Judgment? Whether reporters of Lo al Papers may be allowed to see the Judgment? Whether reporters of Local Pa ers may be allowed to see the Judgment? Whether reporters of Local Papers m y be allowed to see the Judgment? Whether reporters of Local Papers may be llowed to see the Judgment? Whether reporters of Local Papers may be allowe to see the Judgment? Whether reporters of Local Papers may be allowed to s e the Judgment? Whether reporters of Local Papers may be allowed to see the Judgment? Whether reporters of Local Papers may be allowed to see the Judgm nt? Whether reporters of Local Papers may be allowed to see the Judgment?

is proposed to be decided by this judgment since very common question runs through all, however, before dealing with the question, narration of some facts may be necessary. The petitioners are teachers in the Higher Secondary Schools appointed after 1.7.1979. They claim pay scale of Rs.550-900 from the date of their appointment in the Higher Secondary School after new pattern of Education [10 + 2 + 3] was started in the State of Gujarat by Government Resolution dated October 28, 1975. The minimum qualification for teachers in the higher secondary schools is "Trained teachers having Second Class Master's Degree in respective subject or Trained Graduate teachers who have experience of teaching concerned subject for about 7 years in Stds. X & XI shall be eligible to teach in the High Secondary Classes". Petitioners did not possess these qualifications at the time of their appointments however, they acquired the qualifications after 1.7.1979. View taken by the opponents is that petitioners should be entitled to salary in the pay scale of Rs.550-900 from the date of acquiring higher qualification or experience as provided in Government Resolution dated 28.10.1975. Those higher secondary teachers who were qualified, were granted pay scale of Rs.550-900 from the date of their appointment and those who were not qualified, they were granted pay scale of Rs.440-750. Since petitioners acquired the qualification subsequently, whether they can be granted pay scale of Rs.550-900 from the date of acquiring the qualification or from the date of appointment. The dispute was examined by the learned Single Judge through impugned judgment.

3. Ultimately, it is held that "for the aforesaid reasons, the petitions succeed and the impugned order dated 9.1.2002 at Annexure "G" to the petition is hereby quashed and set aside. The respondents are directed to grant the petitioners the benefit of pay fixation in the scale of Rs.550-900 with effect from the date of their appointment [which is admittedly after 1.7.1979 in all cases covered by this judgment] till 31.12.1985 and thereafter in the corresponding revised pay scale of Rs.1640-2900 as on 1.1.1986.

4. Grievance of the appellants is that cases of petitioners fall under Para-2 of the Government Resolution dated 28.5.1981 which envisages that after academic year 1981-82, no untrained teacher will be allowed to be appointed except for the reasons that the teachers duly qualified and experienced are not available and exact information to that effect brought to the notice of 10 + 2 Special Cell through the District Education Officer concerned and prior permission 10+2 Special Cell to make such appointments obtained. The untrained teachers so appointed shall not enjoy any protection. As such, no permission was obtained by the school management for appointment of the petitioners in 1981 / 1983 therefore, they are not entitled to benefit of Government Resolution dated December 8, 1989 providing for pay scale of Rs.550-900 notionally from the date of appointment till 31.12.1985 and thereafter fixed in the revised pay scale of Rs.1640-2900 from 1.1.1986. Further submission is that the learned Single Judge has erroneously granted actual running benefit to the petitioners with effect from the date of appointment even assuming that they were entitled like 123 teachers to whom the benefit was granted on the basis of the permission obtained by the management from the competent authority.

5. The controversy between the parties is examined by the learned Single Judge in Para-8 which is relevant and therefore, referred as under :

"8. Apart from the fact that the Commissioner of Higher Education has not taken any such stand in the impugned order dated 9.1.2002, the fact remains that the petitioners were appointed after 1.7.1979 and there is nothing in the Government Resolution dated 8.12.1989 prescribing that the teachers appointed after 1.7.1979 were required to exercise any option. Be that as it may, when the 123 other higher secondary teachers have been granted the benefit of pay fixation in the scale

> of Rs.550-900 without possessing the qualification prescribed by the Government Resolution of 1975 at the time of their appointment and some of them have not acquired the prescribed qualification even till date and the petitioners have already acquired the prescribed qualification, merely because the concerned managements [where the petitioners were appointed] did not seek approval of the Commissioner for High Education for making the petitioners' appointment, the petitioners are not required to be penalized when the appointment was made through a selection committee where the Government representatives were present and the appointment was approved by the District Education Officer. Further more, when the Commissioner of Higher Education was the authority who was supposed to consider the question of approval, the Commissioner could as well have considered this question at the hearing afforded to the petitioners pursuant to this Court's Order whether there was any infirmity in the petitioners' appointment. No such infirmity has been pointed out either in the impugned order or at the hearing of the petitions."

6. Giving careful consideration to the matter, we are of the opinion that the petitioners were appointed obviously because their services were needed for teaching in higher secondary schools. Therefore, permission should have been sought by the management and in case it was not sought, the default is of the management and not of the petitioners. Even otherwise, seeking permission is regulatory and not mandatory. Simply because permission was not sought by the management, petitioners cannot be deprived of the benefit of the Government Resolution dated December 8, 1989 particularly when similarly placed teachers have been extended this benefit, may be on the footing that in their cases, permission was sought from the competent authority by the managements. Therefore, petitioners are entitled to pay scale of Rs.550-900 from the date of their appointment notionally till 31.12.1985. Thereafter, they be fixed in the pay scale of Rs.1640-2900 with effect from 1.1.1986. Therefore, direction of the learned Single Judge in para-9 referred to hereinabove, is modified to the extent that the petitioners would be fixed in the pay scale of Rs.550-900 with effect from the date of their appointment notionally, thereafter fixed in the pay scale of Rs.1640-2900 from 1.1.1986.

No further point arose for consideration between the parties in this group of Letters Patent Appeals and therefore, this group of Appeals stand allowed to the extent indicated hereinabove.

Civil Applications in this group of Appeals also stand disposed of accordingly.

No order as to costs.

[Bhawani Singh]
Chief Justice

Date : 2.7.2004 [H.K.Rathod]
Judge

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